

In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 334

JOHN HOWARD LAWSON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

The petition for a writ of certiorari asks the Court to review a criminal case pending on appeal in the Court of Appeals for the District of Columbia prior to rendition of judgment by that court, as authorized by 28 U. S. C. 1254 (1) (Pet. 9). The Government opposes the granting of the petition on the ground that this is not a case warranting such "extraordinary" action (*Hamilton Shoe Co. v. Wolf Brothers*, 240 U. S. 251, 258), for the following reasons:

Petitioner was indicted in the District Court for the District of Columbia for refusing, in violation

of 2 U. S. C. (1946 ed.) 192, to answer a pertinent question put to him as a witness before the Committee on Un-American Activities of the House of Representatives, to wit, whether he was or had ever been a member of the Communist Party (R. 9-10).¹ He was found guilty following a jury trial (R. 43), and on May 21, 1948, was sentenced to imprisonment for one year and to pay a fine of \$1,000 (R. 44). He filed a notice of appeal on the same day (R. 2), and was permitted to remain at liberty under bond pending appeal (R. 44).

On June 28, 1948, upon the request of the clerk of the District Court, and pursuant to stipulation between counsel for petitioner and the Government, the time for filing the designation of the record on appeal and for the clerk to transfer the original exhibits to the Court of Appeals was extended to July 28, 1948 (R. 53-54);² the record was filed in the Court of Appeals on that date.

It appears from record papers subsequently filed in the Court of Appeals, which are not contained in the printed joint appendix, that on August 17, 1948, counsel for petitioner filed a motion to extend the time for filing his brief and the

¹ Our designation "R." refers to the joint appendix printed for use in the Court of Appeals, copies of which have been filed by petitioner in this Court (see Pet. 1, note).

² Rule 39 (c), F. R. Crim P., provides that "the record on appeal shall be filed with the appellate court and the proceeding there docketed within 40 days from the date the notice of appeal is filed," but the time for filing and docketing may be extended.

printed transcript of record to and including September 30, 1948.³ In support of the motion it was alleged that counsel were scrutinizing the record to determine which parts should be printed, that it would be necessary to print a substantial portion of the record, and that the pressure of other legal work and commitments during July and August had made it difficult for counsel for petitioner to devote to the preparation of the brief the amount of time the case deserved. Counsel for the Government endorsed the motion "no objection," and it was granted on August 21, 1948, the Court of Appeals at the same time, pursuant to the motion, extending the Government's time to file its brief to October 30, 1948. Thereafter, on September 22, 1948, counsel for petitioner moved the Court of Appeals to grant a further extension of the time for filing his brief to and including October 30, 1948. In this motion it was stated that petitioner's attorneys had "completed the writing and preparation of the appellant's opening brief and the same is ready to be transmitted to the printer for printing, as soon as the Joint

³ Under Rule 17 of the Court of Appeals the record is not required to be printed except upon order of the court, but the parties must print as appendices to their briefs such parts of the record as they desire the court to read. Rule 18 requires the appellant's brief in a criminal case to be filed within 25 days after the filing of the record, but allows him to September 1 to file his brief if the 25-day period expires in July or August. The appellee's brief is required to be filed within 25 days after the filing of the appellant's.

Appendix is received, and the necessary page references inserted." The Government, on September 28, 1948, opposed the request for an extension of time to October 30, 1948, but stated it had no objection to an extension to October 15, 1948, explaining that it had been informed by the printer that the page proof of the joint appendix would be completed on September 29, 1948. On October 2, 1948, before the Court of Appeals had acted on this motion, the petition for a writ of certiorari, together with the joint appendix, was filed in this Court.

It thus appears that petitioner's brief in the Court of Appeals and the joint appendix which is to constitute the printed record in that court have been completed, and that, except for the filing of the Government's brief, nothing more remains to be done to delay prompt and orderly consideration of the case by the Court of Appeals. We submit, therefore, that the normal course of awaiting decision by the Court of Appeals before requesting this Court to review the case on writ of certiorari should here be followed. Petitioner is not in custody, but at liberty on bail. Full consideration by the Court of Appeals of the questions presented and rendition of judgment by that court will help towards crystallizing the issues involved and will aid this Court in determining whether the granting of certiorari is warranted. While the case may present important issues concerning civil liberties of citizens, as petitioner

contends (Pet. 9-13), we submit that they are manifestly not of such transcendent public importance and interest as to require the immediate attention of this Court (cf. *United States v. Mine Workers*, 330 U. S. 258, 269; *Ex parte Quirin*, 317 U. S. 1, 20-21).

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied. If, however, the Court should feel that the petition should be considered on its merits, the Government requests that it be given an opportunity to file a further brief in reply to the petition.

PHILIP B. PERLMAN,
Solicitor General.

OCTOBER 1948.